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## 3.1 Scope Note

This chapter deals with the procedural avenues open to the juvenile and the court when the juvenile is charged with a criminal traffic violation. For a discussion of jurisdiction and procedure when the juvenile is cited for a civil infraction, see Sections 1.2 and 1.4. If the juvenile is charged with a criminal traffic offense, the case may be handled in one of the following ways:

- F the case may be handled under the Juvenile Diversion Act;\*
- F if the violation is contained in the Michigan Vehicle Code, the case may be handled informally under §2b of the Juvenile Code;\*
- F the case may be placed on the consent calendar;\*
- F the case may be placed on the formal calendar and handled as a delinquency case:
  - if the juvenile fails to fulfill probation conditions after the case is placed on the consent calendar;
  - if the offense is not contained in the Michigan Vehicle Code; or

\*See Sections 4.8–4.15.

\*See Section 3.2, below.

\*See Sections 4.1–4.7.

\*See Sections 3.3 and 3.14, below.

— if the court determines that it is in the best interests of the juvenile and the public.\*

For detailed treatment of the required procedures in delinquency cases, see, generally, Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJJ, 1998)

### 3.2 Special Procedures Are Permitted When a Juvenile Is Charged With a Violation of the Michigan Vehicle Code

The Juvenile Code provides special procedures that apply when a juvenile is charged with a violation of the Michigan Vehicle Code or an ordinance substantially corresponding to such a violation. MCL 712A.2b; MSA 27.3178(598.2b), states:

“When a juvenile is accused of an act that constitutes a violation of the Michigan vehicle code, . . . or a provision of an ordinance substantially corresponding to any provision of [the Michigan Vehicle Code], the following procedure applies, *any other provision of this chapter notwithstanding*. . . .” (Emphasis added.)

The procedures listed in MCL 712A.2b(a)–(e); MSA 27.3178(598.2b)(a)–(e), are to be used instead of the procedures contained in other provisions of the Juvenile Code when the juvenile is charged with a violation of the Michigan Vehicle Code or an ordinance substantially corresponding to a provision of the Michigan Vehicle Code. These procedures are as follows:

\*See Section 3.5, below.

“(a) No petition shall be required, but the court may act upon a copy of the written notice to appear given the accused juvenile as required by [MCL 257.728; MSA 9.2428].\* ”

\*See Section 3.12, below.

“(b) The juvenile’s parent or parents, guardian, or custodian may be required to attend a hearing conducted under this section when notified by the court, without additional service of process or delay. However, the court may extend the time for that appearance.\* ”

\*See Chapter 5.

“(c) If after hearing the case the court finds the accusation to be true, the court may dispose of the case under [MCL 712A.18; MSA 27.3178(598.18)].\* ”

\*See Section 7.1.

“(d) Within 14 days after entry of a court order of disposition for a juvenile found to be within this chapter, the court shall prepare and forward an abstract of the record of the court for the case in accordance with [MCL 257.732; MSA 9.2432].\* ”

“(e) This section does not limit the court’s discretion to restrict the driving privileges of a juvenile as a term or condition of probation.”\*

\*See Section 5.6.

Several procedural protections afforded by the Juvenile Code to juveniles charged with offenses not contained in the Michigan Vehicle Code are omitted from the procedures listed above. For example, no provision is made for the appointment of counsel as required by MCL 712A.17c(1)–(3); MSA 27.3178(598.17c)(1)–(3). Formal notice is not required as in MCL 712A.12 and 712A.13; MSA 27.3178(598.12) and 27.3178(598.13), and related court rules. The language of §2b(c) (“If after hearing the case the court finds the accusation to be true”) suggests that a “bench trial” will occur if the juvenile contests the charges, rather than a jury trial. Under MCL 712A.17(2); MSA 27.3178(598.17)(2), any “interested person” may demand a jury trial.\*

\*See, however, Section 3.3, immediately below, for the permissible use of the consent and formal calendars in juvenile traffic cases.

### 3.3 Use of the Consent Calendar and the Formal Calendar

The consent and formal calendars, which are used in delinquency proceedings, may also be used in cases in which the juvenile is charged with a criminal traffic offense. MCR 5.903(A)(3) defines a “delinquency proceeding” as a proceeding involving an offense by a juvenile, and MCR 5.903(B)(4) defines “offense by a juvenile” to include a violation of a traffic law other than a civil infraction. Therefore, although §2b expressly excludes the applicability of other provisions of *the Juvenile Code* to cases involving an alleged violation of the Michigan Vehicle Code, these two procedural mechanisms contained in subchapter 5.900 of the Michigan Court Rules may be utilized by the court in juvenile traffic cases.

The court may place the case on the consent calendar if it appears that protective and supportive action by the court will serve the best interests of the juvenile and the public. MCR 5.932(B).\*

\*See Sections 4.1–4.7.

If the juvenile fails to appear or violates a probation condition while the case is on the consent calendar, the court may choose to place the case on the formal calendar. MCR 5.932(B)(3). Furthermore, MCR 5.932(C) states:

“The court may authorize a petition to be filed and docketed on the formal calendar if it appears to the court that formal court action is in the best interest of the juvenile and the public.”

If the court places the case on the formal calendar, the full panoply of rights under the Juvenile Code attach. *In re Chapel*, 134 Mich App 308, 312–13 (1984).\* “‘Formal calendar’ means the judicial phases other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing. . . .” MCR 5.903(A)(6).

\*See Section 4.3 for a list of these rights.

### 3.4 Required Procedures for Traffic-Related Offenses Contained in the Michigan Penal Code

In addition to those contained in the Michigan Vehicle Code, some criminal traffic offenses are contained in the Penal Code, MCL 750.1–750.566; MSA 28.191–28.834. If the traffic offense alleged is contained in the Penal Code, the court should apply the same procedures as it would apply in any other delinquency case. Also, a prosecuting attorney may request that the Family Division “designate” a case in which any criminal offense is alleged for criminal trial within the Family Division. See MCL 712A.2d(2); MSA 27.3178(598.2d)(2). For a detailed discussion of the required procedures in delinquency and “court-designated” cases, see Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJJ, 1998), Chapters 1–21.

### 3.5 Requirements for Citations or Appearance Tickets

MCL 712A.2b(a); MSA 27.3178(598.2b)(a), states that “[n]o petition shall be *required*, but the court *may* act upon the written notice to appear given the accused juvenile as required by [MCL 257.728; MSA 9.2428]” (emphasis added). The applicable court rules conform to this provision. MCR 5.931(A) states that “[a]ny request for court action against a juvenile must be in writing by means of a petition.” MCR 5.931(C) qualifies this rule, stating that “[a] citation or appearance ticket which conforms to the requirements for valid issuance to an adult may serve as a petition as to an offense other than a major offense when presented to the court. A citation or appearance ticket shall not serve as a basis for pretrial detention.” MCR 5.903(B)(3) defines a “major offense” as an offense that would be a felony if committed by an adult. Thus, a citation or appearance ticket may serve as the charging document for civil infractions and misdemeanors when pretrial detention is not requested.

Citation means “a complaint or notice upon which a police officer shall record an occurrence involving 1 or more vehicle law violations by the person cited.” MCL 257.727c(1); MSA 9.2427(3)(1). The Michigan Uniform Traffic Citation, issued by the Michigan State Police, has 4 parts:

- F The original, or court copy, which is filed with the court.
- F The police copy, which the citing officer retains.
- F The misdemeanor copy, which is given to the defendant if the charged offense is a misdemeanor.
- F The civil infraction copy, which is given to the defendant if the charged offense is a civil infraction.

MCL 257.727c(1)(a)–(d); MSA 9.2427(3)(1)(a)–(d).

MCR 5.933(A)(1) provides that the date and time for the juvenile's appearance will be set by the court. This will occur after the court receives the original copy of the citation.\*

\*See Section 3.10, below, for the court's options following the filing of the citation with the court.

### 3.6 The Consent Calendar and Court Action on a Citation or Appearance Ticket

Although the court may act on a citation or appearance ticket, rather than on a petition, when a violation of the Michigan Vehicle Code (other than a felony) is alleged, it may be more difficult to use the consent calendar when the court does not have before it the information contained in a petition. The juvenile's parent, guardian, or custodian is not identified on a traffic citation or appearance ticket. Although formal notice under §§12 and 13 of the Juvenile Code and MCR 5.920 and 5.921 is not required to place a case on the consent calendar, the consent of *both* the juvenile and parent is required. MCR 5.932(B)(1). The court must identify the juvenile's parent, guardian, or custodian and notify them of consent-calendar procedures, and it may be easier to do so if the court acts on a petition, which requires the name and address of the parent, guardian, or custodian.

### 3.7 When a Petition Must Be Filed

A petition is not required to be filed when a violation of the Michigan Vehicle Code is alleged. MCL 712A.2b(a); MSA 27.3178(598.2b)(a). However, a petition may be filed alleging a traffic violation, and a petition must be filed when the offense alleged is a felony or if pretrial detention is requested. See MCR 5.931(C) and MCR 5.903(B)(3).

A petition must also be filed before the court may issue an order to obtain custody of a juvenile for a failure to appear. MCR 5.931(D)(2).\*

\*See Section 2.8.

Under MCL 712A.11(2); MSA 27.3178(598.11)(2), and MCR 5.914(B)(1), only the prosecuting attorney may file a petition requesting the court to take jurisdiction of a juvenile for having committed a criminal offense. The prosecuting attorney may be a county prosecuting attorney, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, or, if an ordinance violation is alleged, an attorney for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based. MCR 5.903(B)(5). See also MCL 257.45a; MSA 9.1845(1).

A petition must be verified, must set forth plainly the facts that bring the juvenile within the Juvenile Code, and may be upon information and belief. MCL 712A.11(3); MSA 27.3178(598.11)(3). The petition must contain the

following information, if known, or if not known to the petitioner, be stated as unknown:

- F the juvenile's name, address, and date of birth;
- F the names and addresses of:
  - the juvenile's parents;
  - the juvenile's legal guardian, if there is one;
  - each person who has custody or control of the juvenile;
  - the nearest known relative of the juvenile, if no parent can be found; and
  - any court with prior continuing jurisdiction;
- F the essential facts which constitute an offense by the juvenile;
- F a citation to the section of the Juvenile Code relied upon for jurisdiction;
- F a citation to the law or ordinance allegedly violated by the juvenile;
- F the court action requested;
- F if applicable, the notice required by MCL 257.732(7); MSA 9.2432(7),\* and the juvenile's driver's license number; and
- F information required by MCR 3.206(A)(4), identifying whether a Family Division matter involving members of the same family is or was pending.

\*See Section 3.9, below.

MCR 5.931(B)(1)–(8) and MCL 712A.11(3)(a)–(e); MSA 27.3178(598.11)(3)(a)–(e).

A petition may be amended at any stage of the proceedings as the ends of justice require. MCL 712A.11(6); MSA 27.3178(598.11)(6).

### 3.8 Special Requirements Under the Juvenile Crime Victims Rights Act

The complaint or petition filed by the investigating agency must contain a listing of the names, addresses, and phone numbers of any known victims of a juvenile offense. This listing is not a matter of public record. MCL 780.784; MSA 28.1287(784). See also MCR 5.903(A)(18) (the definition of "confidential files" includes this separate statement of victims).

MCL 780.783a; MSA 28.1287(783a), requires the investigating agency or prosecuting attorney that files a complaint or submits a petition seeking to invoke the court's jurisdiction for one of the following offenses to place a

statement on the complaint or petition that the offense resulted in damage to a victim's property, physical injury of the victim, or death. The offenses are:

- F leaving the scene of a personal-injury accident, MCL 257.617a; MSA 9.2317(1);
- F operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual, MCL 257.625; MSA 9.2325;
- F operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual, MCL 324.80176; MSA 13A.80176; and
- F a violation of a local ordinance substantially corresponding to a violation listed above.

### **3.9 Required Notice When Juvenile Is Charged With a "Felony in Which a Motor Vehicle Was Used"**

MCL 257.732(7); MSA 9.2432(7), states that when a juvenile is accused of an act, the nature of which constitutes a felony in which a motor vehicle was used, he or she must be informed that if adjudicated, the juvenile's driver's license will be suspended by the Secretary of State. "Felony in which a motor vehicle was used" is defined as a felony during which the juvenile operated a motor vehicle, and while operating the vehicle presented real or potential harm to persons or property, and one or more of the following circumstances existed:

- “(a) The vehicle was used as an instrument of the felony.
- “(b) The vehicle was used to transport a victim of the felony.
- “(c) The vehicle was used to flee the scene of the felony.
- “(d) The vehicle was necessary for the commission of the felony.”

MCL 257.732(5)(a)–(d); MSA 9.2432(5)(a)–(d).

However, under MCL 257.732(6); MSA 9.2432(6), the following felonies or attempts to commit these felonies are *excluded* from the definition of “felony in which a motor vehicle was used”:

- F taking possession of and driving away a motor vehicle, MCL 750.413; MSA 28.645;
- F use of a motor vehicle without authority but without intent to steal, MCL 750.414; MSA 28.646;
- F failure to obey a police or conservation officer’s direction to stop, MCL 750.479a(2) or (3); MSA 28.747(1)(2) or (3), and MCL 257.602a(2) or (3); MSA 9.2302(1)(2) or (3);
- F felonious driving, MCL 752.191; MSA 28.661;
- F negligent homicide with a motor vehicle, MCL 750.324; MSA 28.556;
- F manslaughter with a motor vehicle, MCL 750.321; MSA 28.553;
- F murder with a motor vehicle, MCL 750.316; MSA 28.548 (first-degree murder), and MCL 750.317; MSA 28.549 (second-degree murder);
- F minor in possession, MCL 436.1703; MSA \_\_. \_\_;
- F fraudulently altering or forging documents pertaining to motor vehicles, MCL 257.257; MSA 9.1957;
- F perjury or false certification to Secretary of State, MCL 257.903; MSA 9.2603;
- F malicious destruction of trees, grass, shrubs, etc., with a motor vehicle, MCL 750.382(1)(c) or (d); MSA 28.614(1)(c) or (d);
- F failing to stop and disclose identity at the scene of an accident resulting in death or serious injury, MCL 257.617; MSA 9.2317; and
- F certain “drunk driving” offenses.

See MCL 257.732(4); MSA 9.2432(4), and MCL 257.319; MSA 9.2019, for the statutory sections that list these offenses. Also excluded is a controlled substance violation under MCL 333.7401–333.7461, or 333.17766a; MSA 14.15(7401)–14.15(7461), or 14.15(17766a), for which the defendant receives a minimum sentence of less than one year.

These offenses are excluded from the notice requirement of MCL 257.732(6); MSA 9.2432(6), because the penalties for all of these listed offenses already require mandatory license suspension upon conviction.

### 3.10 Family Division Options When a Citation, Appearance Ticket, or Petition Is Filed

The Family Division has several options when a citation, appearance ticket, or petition is presented to the court. MCL 712A.11(1)–(2); MSA 27.3178(598.11)(1)–(2), and MCR 5.931(C). MCR 5.932(A)(1)–(5) (preliminary inquiries) and MCR 5.935(B)(3) (preliminary hearings) allow the judge or referee to choose from five different courses of action at a



preliminary inquiry or preliminary hearing. In the interests of the juvenile and the public, the court may:

- F deny authorization of the petition or dismiss the citation, appearance ticket, or petition;
- F refer the matter to a public or private agency pursuant to the Juvenile Diversion Act\*;
- F direct that the parent and juvenile appear so that the matter can be handled through further informal inquiry;
- F proceed on the consent calendar\*; or
- F proceed on the formal calendar.\*

\*See Section 4.8.

\*See Section 4.1.

\*See Section 3.3, above.

### 3.11 Preliminary Inquiries

MCR 5.903(A)(17) defines “preliminary inquiry” as an “informal review by the court to determine appropriate action on a petition.” See MCR 5.931(C) (citation or appearance ticket may serve as charging document for offenses other than felony offenses). A preliminary inquiry, rather than a preliminary hearing, may be held if the juvenile is not in custody and the petition does not request detention. MCR 5.932(A). Thus, no hearing is required, and the juvenile need not be present. The court need only examine the citation, appearance ticket, or petition to determine the appropriate course of action.

The court may assign a referee to conduct a preliminary inquiry. MCR 5.913(A)(1). MCR 5.913(A)(2) and MCL 712A.10; MSA 27.3178(598.10), do not require referees who conduct preliminary inquiries to be licensed to practice law in Michigan.

MCL 257.727c(1)(a); MSA 9.2327(3)(1)(a), requires the officer issuing a citation to file the original copy of the citation (the complaint or notice to appear) in the court in which the appearance is to be made. MCR 5.933(A)(1) provides that the date and time for the juvenile’s appearance will be set by the court. The court may examine the citation filed by the officer at a preliminary inquiry, and, following the preliminary inquiry, set a date and time for the juvenile’s appearance and notify the juvenile.

### 3.12 Notification of Parent, Guardian, or Custodian

MCL 712A.2b(b); MSA 27.3178(598.2b)(b), states:

“The juvenile’s parent or parents, guardian, or custodian may be required to attend a hearing conducted under this section when notified by the court, without additional service of process or delay. However, the court may extend the time for that appearance.

\*See, however, Section 3.6, above, for a discussion of notice and use of the consent calendar.

The procedures outlined in MCL 712A.12 and 712A.13; MSA 27.3178(598.12) and 27.3178(598.13), and MCR 5.920 and 5.921, regarding summonses and notices of hearing do not apply when the juvenile is charged with a violation of the Michigan Vehicle Code. See MCL 712A.2b; MSA 27.3178(598.2b). Thus, it appears that the court may inform the juvenile's parent, guardian, or custodian of a hearing in any reasonable manner.\*

### 3.13 Preliminary Hearings

The court must hold a preliminary hearing if a juvenile is in custody or the petition requests detention. MCL 712A.14(2); MSA 27.3178(598.14)(2). For the required procedures at preliminary hearings, see Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJI, 1998), Sections 7.8–7.20.

### 3.14 Required Procedures for the Factfinding Hearing on an Alleged Violation of the Michigan Vehicle Code

MCL 712A.2b; MSA 27.3178(598.2b), states:

“When a juvenile is accused of an act that constitutes a violation of the Michigan vehicle code, . . . or a provision of an ordinance substantially corresponding to any provision of [the Michigan Vehicle Code], the following procedure applies, *any other provision of this chapter notwithstanding*. . . .” (Emphasis added.)

The last phrase of this provision excludes application of other provisions of the Juvenile Code to cases involving alleged violations of the Michigan Vehicle Code.\* The subsection of §2b that pertains to the factfinding hearing on such a violation, MCL 712A.2b(c); MSA 27.3178(598.2b)(c), states:

“If after hearing the case the court finds the accusation to be true, the court may dispose of the case under section 18 of this chapter.”

The language of §2b(c) is very similar to that in MCR 5.932(B)(2), which deals with consent calendar hearings. MCR 5.932(B)(2) states:

“If, after hearing, the court finds the accusation is true, it may dispose of the matter pursuant to MCL 712A.18; MSA 27.3178(598.18), except that the juvenile shall not be removed from the custody of the parent. If, after hearing, the court finds that the juvenile has violated the Michigan Vehicle Code, . . . the court must fulfill the reporting requirements imposed by MCL 712A.2b(d), 257.732; MSA 27.3178(598.2b)(d), 9.2432.”

\*See Section 3.2, above, for a discussion of the procedural protections contained in the Juvenile Code that are inapplicable to cases adjudicated under §2b.

\*For a detailed discussion of the consent calendar, see Sections 4.1–4.7.

It appears, therefore, that in many cases involving alleged violations of the Michigan Vehicle Code by juveniles, the case will be placed on the consent calendar. See, generally, *In re Neubeck*, 223 Mich App 568 (1997). Because courts often require a juvenile to enter a plea of admission before placing the case on the consent calendar, the factfinding hearing may be in most instances a plea proceeding.

If, however, the case is placed on the formal calendar, the full panoply of rights under the Juvenile Code attach. *In re Chapel*, 134 Mich App 308, 312–13 (1984).<sup>\*</sup> “‘Formal calendar’ means the judicial phases other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing. . . .” MCR 5.903(A)(6). For a detailed discussion of trials in delinquency cases, see Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJJI, 1998), Chapter 11.

It appears that the court may assign a referee to conduct the required hearings on alleged violations of the Michigan Vehicle Code. MCR 5.913(A)(1) states that, subject to the limitations in MCR 5.913(A)(2), the court may assign a referee to preside at a hearing other than a jury trial. MCR 5.913(A)(2) requires a referee to be licensed to practice law in Michigan before conducting hearings on the formal calendar.

<sup>\*</sup>See Section 3.3, above, for a discussion of when a case may be placed on the formal calendar, and 4.3 for a list of the rights of juveniles in delinquency proceedings.

